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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,116	11/03/2003	Larry J. Whitener	21447-00001	5114

7590 10/04/2005

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EXAMINER	
DONELS, JEFFREY	
ART UNIT	PAPER NUMBER
2837	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/700,116	WHITENER ET AL.	
	Examiner	Art Unit	
	Jeffrey Donels	2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 July 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6,8-12,14-22 are rejected (to the extent understood) under 35 U.S.C. 102(e) as being fully met by Stevenson (USP 6737570).

Stevenson discloses an interactive personal audio device which comprises a microphone 70, music generation device 70, processing unit 45, and headphones 46. Applicant has amended the claims by adding the limitation of "a user interface ... configured to control the output signal of said processing unit by altering the amplification of at least one of the first and second input signals" and argues that Stevenson does not teach this limitation. In the art of musical instruments and audio electronics, this is commonly known as 'audio mixing.' However, Stevenson does in fact teach such mixing control. "Generated sounds from the sound generator 43 may then be mixed in a mixer 45 with the output from a digital to analog converter (DAC)

44a. Conventionally, the output from the DAC 44a may be the audio being played by an on-board audio player 70 or from the processor 38. The mixer 45 mixes the generated sounds, *developed in response to operator 40 inputs*, with an ongoing digital audio source from the DAC 44a or with an ongoing analog audio source 71. The mixer 45 outputs the mixed audio through an output buffer amplifier to drive the headphones 46 or an audio line level output 53, in one embodiment." (Col. 3 lines 59-67) Stevenson then goes on to further state (Col. 4 lines 32-35) "Each of the operators 40 may be user programmable, in one embodiment, with a user selected sound or effect being generated in response to actuation of the operator 40."

Claims 1-6,8-12,14-22 are rejected (to the extent understood) under 35 U.S.C. 102(b) as being fully met by Ng (USP 6328570).

Ng discloses a portable karaoke unit which comprises a microphone 144, music generation device 210, processing unit 250, and headphones. Applicant has amended the claims by adding the limitation of "a user interface ... configured to control the output signal of said processing unit by altering the amplification of at least one of the first and second input signals" and argues that Ng does not teach this limitation. In the art of musical instruments and audio electronics, this is commonly known as 'audio mixing.' However, Ng does in fact teach such mixing control. "Effects generator 250 receives voice data from the microphones and incorporates sound effects such as echo, reverb, and the like. *The amount of echo, reverb, and volume is controlled by processor 210 according to user commands.* Effects generator 250 also mixes the

altered voice data with the output from sound module 240 and outputs the mixed sound through audio output port 140, headphone output port 142, and/or a radio frequency transmitter 245." (Col. 5 lines 57-64).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevenson.

Stevenson (applied here in a similar manner as above) discloses all features recited, but does not explicitly disclose the second microphone / receiving the third audio input as recited. It has been held that the mere duplication of working parts does not constitute nonobviousness (In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)). It would have been obvious to modify the teachings of Stevenson accordingly, so as to allow for more simultaneous users of the Stevenson device.

Claims 7,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ng.

Ng (applied here in a similar manner as above) discloses all features recited, but does not explicitly disclose the second microphone / receiving the third audio input as recited. It has been held that the mere duplication of working parts does not constitute

nonobviousness (In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)). It would have been obvious to modify the teachings of Ng accordingly, so as to allow for more simultaneous users of the Ng device.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Donels whose telephone number is 571-272-2061. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2800 ext 37. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jeffrey Donels
Primary Examiner
Art Unit 2837